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2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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Co-Chairs' summary of the regional round table on the humanitarian impact of nuclear weapons and the prospects for a ban treaty*

Submission by Thailand

1. On 26-27 March 2015, the Ministry of Foreign Affairs of Thailand, in collaboration with the WMD Project of the International Law and Policy Institute (ILPI) of Norway, co-organised the 9th regional round table on the humanitarian impact of nuclear weapons and the prospects for a ban treaty at the Hua Chang Heritage Hotel, Bangkok, Thailand. A total of 34 participants attended the roundtable meeting, 24 of whom were government officials, the rest from civil society and academia. The meeting began in the morning of 26 March and ended at lunch time on 27 March 2015. The meeting started with an introductory session, followed by 4 substantive sessions on the prospects of the humanitarian initiative and nuclear disarmament. Each of the sessions began with introductory remarks from previously identified participants. The discussions were carried out under Chatham House Rules, and co-chaired by representatives from the Ministry of Foreign Affairs of Thailand and ILPI.

Introductory session

2. Presentations were given on the overview of nuclear weapons; the immediate and long-term consequences of nuclear explosions; the NPT and Nuclear-Weapon-Free Zones (NWFZs); the South-East Asia NWFZ; the current status of nuclear disarmament; and, expectations for the upcoming 2015 NPT Review Conference.

3. Several participants pointed to the disappointing lack of progress in nuclear disarmament. It was emphasised that the legal framework must allow for an effective mechanism aimed at the total elimination of nuclear weapons. In the meantime, non-nuclear-weapon states should strengthen their efforts to persuade nuclear-weapon states as well as the 4 states outside the NPT to engage in the process, possibly by convincing the members of parliament in each of those countries.

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4. A participant expressed the view that the humanitarian initiative paved way for renewing focus on nuclear disarmament, and suggested that useful outcomes of previous conferences on the humanitarian impact of nuclear weapons should be included in the outcome document of the 2015 NPT Review Conference.

Session 1: Status of the humanitarian initiative

5. A presenter opined that the humanitarian initiative had changed the discourse on how nuclear disarmament is perceived, departing from the traditional theory of national security doctrines based on nuclear deterrence.

6. Many participants viewed that the humanitarian initiative had raised public awareness of the catastrophic consequences of nuclear weapons and made the issue of nuclear disarmament more approachable to the wider public. It was also pointed out that the humanitarian initiative provided an opportunity for new actors to engage in the discussion on nuclear disarmament, particularly those countries that were not previously affected by the explosion of nuclear weapons.

7. A number of participants spoke in support of the Austrian Pledge, and encouraged more countries to join the pledge.

8. At the same time, some participants sought clarification on the status of the pledge and its role in leading to further concrete actions. For instance, how would the pledge feed into international processes such as that those related to the NPT? One participant noted that the pledge contained less number of actions than previously listed in the outcome document of the 2010 NPT Review Conference.

9. Many participants agreed that the humanitarian initiative had been gaining increasing momentum, but at the same time expressed their concerns that nuclear-weapon states are unlikely to take a lead role or fully cooperate in a process to ban and eliminate nuclear weapons. Therefore, many viewed that non-nuclear-weapon states should take advantage of this strong momentum to change the status quo and initiate concrete actions, with steps clearly outlined.

10. An analogy to the ban on nuclear weapons was raised by one participant with regard to the ban on smoking. The smoking ban was not initiated or driven by smokers. Nevertheless, societal norms continued to develop in such a way that smoking became less acceptable in public places. A similar analogy was made using the example of torture and slavery.

11. Many participants stressed the need to spread the discussions on this issue to involve as many sectors as possible, including high-level government officials, in order to create and sustain the political will to achieve nuclear disarmament.

Recommendations for further actions

12. The participants made the following recommendation: Promote the discussions on the humanitarian consequences of nuclear weapons to reach as wide a range of audience as possible, including high-level government officials and, where appropriate, members of parliament, to raise greater awareness on the issue. Civil society and government officials should also educate the general public on the dangers and threats from the existence of nuclear warheads in their countries, in order to impact and help convince members of parliament to engage more actively in the nuclear disarmament process.

Session 2: Towards the Review Conference

13. A presentation for this session touched on various aspects of the upcoming 2015 NPT Review Conference, such as challenges to the implementation of the NPT, the success criteria for the NPT Review Conference and expectations for the 2015 NPT Review Conference.

14. It was pointed out that major challenges to the implementation of the NPT stemmed from diverse preferences and priorities given to the implementation of the 3 pillars by the state parties, and the lack of compliance to Article VI of the NPT by nuclear-weapon states.

15. A presenter viewed that success of the 2015 NPT Review Conference would depend on progress in nuclear disarmament, the outcome of the Third Conference of States Parties and Signatories to Treaties Establishing Nuclear Weapon Free Zones and Mongolia, progress in establishing a Nuclear Weapon Free Zone in the Middle East, and the status of negotiations on Iran's nuclear program.

16. Many participants expressed their concerns that the 2015 NPT Review Conference would not be able to meet expectations.

17. Regarding how the humanitarian initiative is relevant to the NPT process, a participant opined that the initiative actually provided for "positive pressure" on the international community by providing for an opportunity to discuss further actions on nuclear disarmament not necessarily limited to the NPT.

18. A participant questioned the value of specifying timeframes in the outcome document, especially because the previously agreed timeframe had not been adhered to by nuclear-weapon states. It was further emphasised that non-nuclear-weapon states needed to be prepared to move ahead, even without an agreed time frame by nuclear-weapon states. It was further suggested that like-minded non-nuclear-weapon states utilise the time during the 2015 NPT Review Conference to have a focused discussion on filling the legal gap regarding the prohibition and the total elimination of nuclear weapons.

19. Some participants argued that timeframes remained necessary for the outcome document. It was then suggested that a condition could be created to provide incentives for nuclear-weapon states to adhere to such a time frame.

20. A participant mentioned the NAM working paper on elements for a plan of action for the elimination of nuclear weapons, with a phased programme and specific timeline for each step towards a nuclear weapons convention. This paper could serve as a basis for further development on this front.

21. One participant opined that successful nuclear disarmament efforts must engage all nuclear-weapon states.

22. However, many participants underlined that nuclear-weapon states can be engaged without having to officially participate in the initiation of any formal process. Engagement does not necessarily mean waiting for everybody to agree before moving ahead.

23. A participant remarked that while nuclear-weapon states are not required to be on board from the beginning of the process, it is important to maintain our efforts to convince them to participate. This can be done by creating public pressure on the politicians regarding the safety and security of the people amidst the presence of

nuclear warheads within those countries. It was important to change the "narrative" of the issue by continuing to question the legitimacy of nuclear weapons.

Recommendations for further actions

24. The participants made the following recommendation: Organize a meeting of disarmament officials from states that are in support of a ban treaty process on the sidelines of the 2015 NPT Review Conference to discuss further actions and steps to initiate and take forward the process for a ban treaty.

Session 3: Closing the legal gap

25. Presenters for this Session noted that "closing the legal gap" necessarily involves legal and political considerations.

26. With reference to the *Legality of the Threat or Use of Nuclear Weapons* (ICJ Advisory Opinion, 1996) it becomes clear that key gaps include; (1) the need for agreement among NWS in order to achieve the goals of nuclear disarmament, although an obligation to pursue in good faith and bring to a conclusion negotiations on nuclear disarmament in all its aspects does exist, (2) no comprehensive prohibition on nuclear weapons exists, which is not the case for all other weapons of mass destruction, (3) the legality of the use of nuclear weapons in extreme circumstances of self-defence is inconclusive, and (4) debates on the place of "Deterrence" in international law continue.

27. It was suggested that the survival of humanity ought to take precedence over the survival of an individual state. There are also questions raised as to whether legal arguments such as duress and proportionality were appropriate or could be relied upon in the nuclear weapons context. Legal issues in NWFZs, including rights of passage for ships carrying nuclear weapons were also discussed.

28. The absence of an expressed prohibition on nuclear weapons remains the most significant legal gap.

29. The obligation under Art.VI of the NPT to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control, is an obligation of result. Legal action, such as those instituted by the Marshall Islands, is one way to bring about this result.

30. A presenter observed that on the political side, reform of the international architecture is necessary, to end justifications for the continued existence and possession of nuclear weapons, and to promote "common human morality". Environmental, health, human rights and dignity and protection of civilians should also be addressed.

31. On this point, a presenter suggested that processes towards a ban treaty could be promoted by non-nuclear-weapon states, otherwise the continuing inaction would result in a lost opportunity, agency and power.

32. A presenter took issue with the notion that a new ban treaty would undermine the NPT. That would only be the case if the NPT was designed to legitimise nuclear weapons.

33. Participants generally agreed that a comprehensive prohibition on nuclear weapons, by way of a ban treaty, would most effectively close the legal gaps.

34. At the same time, participants debated widely on the extent and timing to engage nuclear-weapon states in processes towards the said ban treaty. While some noted that processes should always involve nuclear-weapon states, others proposed that, without antagonising or excluding any party, non-nuclear-weapon states should take the lead role in initiating the process while ensuring that no party is in a position to obstruct these efforts. Additionally, focus could first be placed upon "prohibition" before "elimination" of nuclear weapons.

35. In either case, the sentiment of the room was that regardless of involvement by nuclear-weapon states, non-nuclear-weapon states and other interested sectors should push ahead and engage nuclear-weapon states at a suitable point.

36. The role of civil society in these processes was also discussed. In particular, a participant proposed that civil society actively engage states by drafting any necessary documents needed to help trigger diplomatic negotiations on a possible ban treaty.

37. Participants noted conceptual and policy difficulties faced by states which claim to support disarmament, while remaining part of security regimes that rely on nuclear weapons. A question of prohibition extending to military doctrines that incorporate nuclear weapons was also raised.

38. It was noted that shifts in norms, conditions and attitudes take time, therefore action to stigmatise nuclear weapons which should help to facilitate changes in policy, should be taken as soon as possible.

39. Although politically, existing international infrastructures maintain nuclear weapons in a privileged position, many participants noted that there is now already a shift of legal and societal norms, attitudes and conditions which could eventually affect changes in customary international law and state practice. These emerging shifts are in no small part attributable to the Humanitarian Initiative, which has raised awareness, revitalised and reshaped the agenda.

Recommendations for further actions

40. The participants made the following recommendations:

(a) States can initiate discussions aimed at beginning an appropriate diplomatic process to address the legal gaps, with the drafting and general support of civil society and key lead countries with the technical and political capacity to do so;

(b) Other legal channels that could be considered include submitting a request for another ICJ Advisory Opinion on the legality of the threat or use of nuclear weapons, taking into account the dynamics of the Court and changes in circumstances since 1996. States may also opt to join in legal action such as that being pursued by the Marshall Islands to give effect to international commitments;

(c) Occasions such as the 70th Anniversary of the Hiroshima and Nagasaki Bombings may also provide greater publicity and impetus toward future progress in these fields.

Session 4: Role of States in Asia and the Pacific

41. The presenters of this Session discussed opportunities and ways in which Asia-Pacific states can play a role in efforts to address the legal gaps.

42. A presenter suggested that Asia-Pacific states could signal commitment by hosting relevant meetings towards this purpose.

43. Ongoing engagement with nuclear-weapon states also remains a crucial element in efforts to deal with legal gaps.

44. A presenter reiterated that the Humanitarian Initiative has "reinvigorated" the discourse and led to a reconsideration of existing norms, and expressed a view that movements for the elimination of nuclear weapons can be led by those states whose positions on this issue are clear.

45. Moreover, in one presenter's view, efforts in support of a ban treaty could be made by states, notwithstanding existing security alliances within the region.

46. Participants noted the importance of presenting the case for the prohibition of nuclear weapons to the political leaders in respective states as a necessary step towards achieving tangible results.

47. Participants recognized two regional mechanisms, ASEAN and the ASEAN Regional Forum (ARF) which could contribute to advancing these agendas, with particular note on the potential of progress in SEANWFZ negotiations.

48. Participants noted a suggestion that new customary international law could come about as a result of changes in state practice regarding nuclear weapons and nuclear deterrence policies.

49. Participants discussed the need to change mentalities, shape public opinion and display political leadership. The commencement of a new ban treaty process would be one way to do so, although this ought not to undermine the NPT process.

50. Despite opportunities and potential roles Asia-Pacific states can have regarding these issues, the importance of various relationships with the P5 and other states would still factor significantly, while pressure from the P5 is to be expected. Views were raised, nonetheless, that as "friends", states can make their different positions known to others.

51. It was also suggested that while moves for a prohibition is key, ways forward by other means should also be considered.

Recommendations for further actions

52. The participants made the following recommendations:

(a) Non-nuclear-weapon states, including those in the Asia-Pacific, can play a role in addressing the legal gaps in the prohibition of nuclear weapons. Furthermore, along with showing political commitment, those with technical and political capacity could assume leading roles;

(b) The outcomes of this Regional Roundtable should be conveyed to its participants, and more widely to interested organisations and governments, as well as to international forums and conferences, including the 2015 NPT Review Conference, to communicate viewpoints and encourage further action and engagement.